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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,444	02/27/2004	David Shaver	48550/P003US/10309896	5009
29053	7590	06/15/2005	EXAMINER	
DALLAS OFFICE OF FULBRIGHT & JAWORSKI L.L.P.			NGUYEN, SON T	
2200 ROSS AVENUE			ART UNIT	
SUITE 2800			PAPER NUMBER	
DALLAS, TX 75201-2784			3643	

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/789,444

Applicant(s)

SHAVER ET AL.

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the step of twisting said flexible material around said growing unit must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

Art Unit: 3643

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Upon reviewing the specification, the Examiner did not find a description of the step of twisting the flexible material around the growing unit. The present invention appears to pertain to twisting the vines around the flexible material and not vice-versa. Fig. 2 shows at ref. 24 the flexible material being secured to the base of the plant but this is not the same as twisting the flexible material around the growing unit, for a growing unit includes at least two plant vines, thus, the flexible material does not twist around the growing unit.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1,3,4,6-9** are rejected under 35 U.S.C. 102(b) as being anticipated by The Hop Picking Year article (herein Hop) dated summer 1961 from <http://www.bygonebodiam.co.uk/Hop%20Training.htm>.

For claims 1 & 9, Hop teaches a method for growing a plant comprising planting the plant in a growth medium (can be seen from the pictures); twisting at least two plant vines of the plant together to form a growing unit (see pictures, especially "Mrs Baldock-Apps Thirding" two vines in the middle are twisted on the string, each hop plant includes a plurality of vines and two vines are to be support by a string, see article); and maintaining the growing unit during the growth and production cycles of the plant.

For claim 3, Hop teaches twisting the vines together around a string (see pictures, especially "Mrs Baldock-Apps Thirding" two vines in the middle are twisted on the string, each hop plant includes a plurality of vines and two vines are to be support by a string, see article).

For claim 4, Hop teaches a yield system comprising a growth medium, a plant having vines growing from a single root system (a hop with multiple shoots that grow into multiple vines); and supports (the strings). See pictures and article description.

For claims 6 & 7, Hop teaches a method for growing a plant comprising twisting vines of the plant around a flexible material (the string), and securing the flexible material, wherein the vines are twisted vertically around the flexible material. See claim 1, pictures and article description.

For claim 8, Hop teaches in "Mrs Baldock-Apps Thirding" picture a rod (the middle stick) which the vines twist around.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3643

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 2,5,10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hop (as above) in view of Gaudru (FR2797559A1).

For claim 2, Hop is silent about securing one end of the flexible material at the base of the plant. Gaudru teaches a method for growing a plant comprising securing one end (at ref. 12) of a flexible material 4 at the base of the plant. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the step of securing one end of a flexible material at the base of the plant as taught by Gaudru in the method of Hop as an alternative way to anchor the flexible material. Note, Hop teaches the flexible material being anchored somewhere in the base area of the plant already.

Since Hop already teaches the twisting step by twisting the vines around the flexible material but not vice-versa, it would have been obvious to one having ordinary skill in the art at the time the invention was made to reverse the step of twisting the vines around the flexible material as taught by Hop with twisting the flexible material around the plant, since it is has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. In re Einstein, 8 USPQ 167.

For claim 5, Hop teaches a flexible material having one end supported above the vines (see "Heading" picture), but Hop is silent about the other end of the flexible material tied around the base of the plant. Gaudru teaches a system for growing a plant comprising securing one end (at ref. 12) of a flexible material 4 at the base of the plant.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to tie one end of a flexible material at the base of the plant as taught by Gaudru in the system of Hop as an alternative way to anchor the flexible material. Note, Hop teaches the flexible material being anchored somewhere in the base area of the plant already.

For claim 10, Hop teaches securing the opposite end of the flexible material at a height taller than the plant (see "Heading" picture), but Hop is silent about securing one end of the flexible material at the base of the plant. Gaudru teaches a method for growing a plant comprising securing one end (at ref. 12) of a flexible material 4 at the base of the plant. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the step of securing one end of a flexible material at the base of the plant as taught by Gaudru in the method of Hop as an alternative way to anchor the flexible material. Note, Hop teaches the flexible material being anchored somewhere in the base area of the plant already.

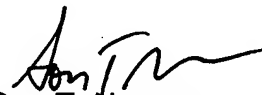
### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Son T. Nguyen  
Primary Examiner  
Art Unit 3643

stn